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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/539,193	03/30/2000	Roger K. Brooks	930114.407	8635	
500	7590 09/08/	005	EXAM	EXAMINER	
SEED IN	SEED INTELLECTUAL PROPERTY LAW GROUP PLLC			LAFORGIA, CHRISTIAN A	
701 FIFTH SUITE 630			ART UNIT	PAPER NUMBER	
SEATTLE,	WA 98104-7092	•	2131		
			DATE MAILED: 09/08/2005		

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief Art Unit Christian La Forgia The RAPLING DATE of this communication appears on the cover sheet with the correspondence address THE REPLY FILED 15 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely lie one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.1.14. The reply must be filed within one of the following time periods: a) The period for reply expires months from the mailing date of the final rejection. b) The period for reply expires months from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (e) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 70807(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the propressed of eleterminist the period of extensions and the corresponding around to the fee. The appropriate extension fee under 37 CFR 1.176(b) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action, or (2) as set forth in (b) above, if checked, Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). APPEAL The Notice of Appeal was filed on	•			
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and was not earlier presented. See 37 CFR 1.116(e).	8. The affidavit or other evidence filed after a final action, because applicant failed to provide a showing of good a	but before or on the date of filing a land sufficient reasons why the affida	Notice of Appeal will wit or other evidence	not be entered is necessary
9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.	entered because the affidavit or other evidence failed to showing a good and sufficient reasons why it is necessary	overcome <u>all</u> rejections under appears over and was not earlier presented.	eal and/or appellant fa See 37 CFR 41.33(d)	ails to provide a (1).

U.S. Patent and Trademark Office PTOL-303 (Rev. 7-05)

13. Other: ____.

REQUEST FOR RECONSIDERATION/OTHER

See Continuation Sheet.

11. 🖾 The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Raper No(s).

Continuation Sheet (PTOL-303)

Application No.

Continuation of 3. NOTE: The proposed amendmet to claim 49 raises new issues that would require further consideration and an updated search to be conducted by the Examiner.

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the references themselves provide a teaching, suggestion, and motivation to combine the references with a reasonable expectation of success as cited in the office action.